SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 836

KARL HOBLITZELLE,

vs. *Appellant,*

CITY OF UNIVERSITY PARK, ET AL.

Appellees.

STATEMENT AS TO JURISDICTION.

To the Honorable the Supreme Court of the United States:

Comes now Karl Hoblitzelle, Appellant, herein and in compliance with the rules and in addition to the application heretofore filed in the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas, reference to which is hereby made, files this statement disclosing the basis upon which it is contended that this Court has jurisdiction upon appeal to review the judgment of the Court of Civil Appeals of such district and for such statement says:

Statement.

This is a suit in which Karl Hoblitzelle, Appellant, invoked the Equity powers of the State District Court of Dallas County, Texas, to enjoin the City of University Park, its Mayor, City Council and Chief of Police, from interfering with the erection of a business building approximately 100 feet front by 90 feet in depth upon two lots

about two hundred feet square at the North East corner of Preston Road and St. Andrews Drive, which latter street is the South boundary of University Park and the North boundary of Highland Park, said towns being suburbs of the City of Dallas.

The injunction, and supporting Mandamus, were asked on the ground that the action of the City authorities in refusing a building permit was arbitrary and unreasonable and amounted to a deprivation of plaintiff's property without due process of Law and denied to Plaintiff the Equal Protection of the Law, contrary to the Fourteenth Amendment to the Constitution of the United States.

Upon a trial in the District Court, defendants demanded a jury, and, at the conclusion of the evidence, the Court submitted but one question to the Jury, that is whether such action of defendants in denying to plaintiff a permit to build a business building upon his said lot was unreasonable or arbitrary as those words were defined in the charge. To this issue, the Jury answered "Yes," and judgment was entered upon said verdict, in accordance therewith, awarding injunction and including Mandamus to defendants to issue the permit (R. 33).

This judgment was appealed to the Court of Civil Appeals of the Fifth Supreme Judicial District of Texas, at Dallas, which court, in a written opinion, found at page 45 of the Transcript filed herein reversed and rendered the judgment of the trial court on the ground that the findings of the Zoning Board rather than the verdict of the Jury as to the reasonableness of the action of the City shall control.

This is the issue to be decided by this Court. In other words, when a zoning board has acted, is that action final or its reasonableness subject to review?

In due time, motion for rehearing was filed and overruled; application for writ of error to the Supreme Court of

Texas was filed (R. 55) and denied (R. 104), motion for rehearing was filed, and upon being overruled, Appellant Karl Hoblitzelle presented application for appeal to Honorable Joel R. Bond, Chief Justice of the Court of Civil Appeals (R. 1), which appeal was allowed and bond for $1,000.00 for cost of appeal was fixed (R. 3). Bond was duly filed with the Clerk of the Court of Civil Appeals (R. 4). Pertinent parts of the Record, including Praecipe, were prepared by Appellant and presented to the Clerk (See Transcript). Counsel for appellee, in lieu of filing request for additional instruments, undertook to and did re-write the Transcript, which thereupon was agreed to by both parties and, proper certificate having been affixed by the Clerk of the Court of Civil Appeals, it was duly forwarded to the Supreme Court.

a. The question involved does not depend upon any statute. The validity of the zoning ordinance is not in question, but only the manner of administration of the ordinance.

This Court has jurisdiction of this case under Section 344 of Title 28 of the United States Code for the reason that, as above pointed out, a final judgment of the Court of Civil Appeals, of which Appellant complains, was approved by the Supreme Court of Texas, the highest Court of the State, which thereafter overruled a motion for rehearing thus sending the case back to the Court of Civil Appeals where the appeal was allowed by the Chief Justice to this Court.

The Statute of Texas, under which the city passed its zoning ordinance is Revised Civil Statutes, Article 1175, Section 26, giving cities the right 'to divide the city in zones or districts, and to regulate the location, size * * * bulk and use of buildings within such zones or district * * *,,,

No attack is here made upon the validity of the statute or the ordinance other than that such statute, ordinance